IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2373 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHARDABEN CHANDULAL DAVE - Petitioner(s)
Versus
SPECIAL RECOVERY OFFICER CO OPERATIVE SOCIETIES & 2 - Respondent(s)

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Appearance :

MS DEVYANI N DAVE for Petitioner(s) : 1,MS HINA DESAI for Petitioner(s) : 1,
MR VN RAVAL for Respondent(s) : 1,2,3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 01/11/2006

ORAL JUDGMENT

1. In this petition, the petitioner has prayed for setting aside of notice dated 3-3-1997 by which

her immovable property came to be attached by the respondents no. 1 and 2.

2. It is not in dispute that the petitioner had taken a loan of Rs. 30,000/- from the respondent no.2-bank in the year 1988-1989. It is also not in dispute that the petitioner had not repaid the loan amount with agreed interest and that therefore, by year 1995-1996 substantial amount was due and payable by the petitioner to the respondent no.2-bank. In furtherance of seeking recovery of the amount due and payable, respondents no.1 and 2 attached the immovable property of the petitioner by the impugned notice.

3. In the present petition, the petitioner neither disputes having received loan nor disputes the liability to repay the same. The petitioner also does not raise contention that she had repaid the entire loan with interest. The main purpose for filing the petition as is emerging from the pleadings was that the petitioner required

installment for repayment of outstanding dues.

3.1 During the pendency of the petition, this Court had granted interim relief in terms of paragraph 15(B)of the petition. In essence, therefore, impugned notice dated 3-3-1997 as at Annexure-D to the petition was stayed.

4. The petitioner thus enjoyed interim protection by this Court for nearly nine years. During the said period, the petitioner should have raised necessary funds and repaid the outstanding amounts. However, learned advocate for respondent no.2 placed on record the details of outstanding dues of the petitioner. These details reflect that the petitioner has not paid any substantial amounts during the pendency of this petition to the respondent no.2-bank. As noted earlier, main purpose of filing of the petition was to seek installments. In fact, the petitioner enjoyed time of nearly nine years for repayment of loan. She made no sincere efforts to repay.

5. Thus, the purpose of filing of the petition has been served more than what even the petitioner could have hoped for. No further time can be granted for repayment of loan particularly when during all this while when the petition was pending, the petitioner showed no urgency to repay the outstanding dues.

6. Considering the facts of the case, however, since it has been suggested that the petitioner is a widow, not having any means of income, that the the property under attachment is her residential house, in the interest of justice, the petition is disposed of without disturbing the action of the respondents, however, granting following directions :

1. The respondents no. 1 and 2 shall provide the petitioner with accounts of the outstanding dues.

2. If the petitioner prays for breathing time

for repayment of the entire dues, the same shall be granted before taking further coercive action.

3. If the petitioner fails to repay the amounts as mentioned above, the respondents no. 1 and 2 shall undertake fresh valuation of the attached immovable property before seeking to recover the dues through further coercive measures.

7. With these directions, the petition is disposed of. Rule is discharged. Interim relief is vacated. No order as to costs.

(Akil Kureshi, J.)

(raghu)